

**Town of Foxborough
Conservation Commission Minutes
March 5, 2012**

Members Present: Robert Boette (Chair), Allan Curtis (Vice Chair), Eric Nelson (Clerk), Douglas Davis, Judith Johnson, James Marsh and Valerie Marshall
Staff Present: Jane Sears Pierce, Conservation Manager and Lee Ann Tavares, Secretary
Others Present: See attached sign-in sheet

Meeting Opened

Bob Boette opened the meeting, held in the Andrew A. Gala Jr. Meeting Room, at 7:00 p.m.

15 Kendall Drive, Notice of Intent, File #F2012-1

Information Reviewed:

- NOI received 2/21/12
- Letter to the Commission from Mr. Roger Proulx dated 2/20/12
- Legal opinion from Atty. Matthew Watsky dated 2/14/12
- Wetland evaluation by Briscoe Lang, Pare Co. dated 2/14/12
- Transcript of Excerpt from Foxborough Annual Town Meeting, 5/8/2000, Article XVII
- Plan Titled "Building Permit Plan of Land in Foxborough, MA 15 Kendall Drive" dated 2/14/12 by Bay Colony Group, Inc.

Bob opened the hearing by reading the legal notice, as posted in the Sun Chronicle.

The applicant, Roger Proulx was present along with his representatives, Bill Buckley of Bay Colony Group, Briscoe Lang of Pare Corp and Atty. Matthew Watsky.

Briscoe Lang began by reviewing the proposed project's history, including the recently issued Positive Determination. He explained that the site's wetland, Isolated Land Subject to Flooding under the Wetlands Protection Act, has no buffer zone. The wetland is shown as a potential vernal pool on the Natural Heritage and Endangered Species Program's OLIVER GIS datalayer, but has not been certified per the NHESP. Currently, the backyard's lawn extends to an existing fence and a number of white pines would need to be cut down to extend the back yard. The back yard slopes gently toward the back, forming a bowl shaped depression beyond the fence, which rises up before sloping back down to the wetland. The proposed project includes the construction of a 25 foot by 25 foot detached garage, tree removal, grading, lawn expansion and the installation of a chain linked fence. The project will require approximately 40 cubic yards of fill.

Jim asked about the current condition of the area between the existing and proposed fence line and was told that it was in a natural condition, but a large oak tree and other specimen trees would not be cut down. Doug asked why the fence was placed in the proposed location. Bill Buckley explained that there were no separate filings for the lots in this subdivision; there was only one filing for the subdivision. Modifying the proposed fence was discussed.

Jane stated that she had visited the site earlier in the day and agreed with the plan's wetland delineation. She informed the Commission that while attending a vernal pool workshop during the MACC Annual Conference, Matt Burne (vernal pool expert) stated that the area is currently in drought condition. She stated that the water in the vernal pool was currently low, but had been much higher during her site visit, last spring. She explained that vernal pool amphibians live on south facing deciduous slopes, noting that the proposed lawn expansion area is predominantly covered by pine trees. She asked about using a LID vegetated swale at the toe of the slope to prevent fertilizers and other pollutants from running into the vernal pool. She also wanted to maintain as many trees (for shade) as possible along the vernal pool's edge.

Doug asked about reconfiguring the proposed fence line to keep it at least 50 feet away from the vernal pool. Mr. Proulx stated that he did not want to do this, since he planned to use the area as a soccer field. The Commission asked for a revised plan showing the trees that will be left (not cut down) in relation to the fence. At this point, Atty. Watsky asked that discussions be tabled for five minutes, so that he could meet with Mr. Proulx.

Motion was made at 7:30 PM by Doug Davis to table the hearing for five minutes to allow Atty. Watsky to have time to confer with his client, seconded by Allan Curtis. **Vote: 7-0-0.**

Motion was made at 7:35 by Doug Davis to reconvene the hearing, seconded by Val Marshall. **Vote 7-0-0**

Upon return from the break Atty. Watsky, as Counsel, stated that he wanted the Commission to feel that they are working with them, but it was his determination that the Commission did not have any jurisdiction over the ILSF buffer zone. He based this on the WPA Regulations and the Town's Bylaw that give jurisdiction only to "certified" vernal pools.

Atty. Watsky indicated that Mr. Proulx agreed to an Order of Conditions with conditions including the submittal of a revised plan showing the four foot deep by two foot wide swale along the toe of the slope to hold runoff and would also shown where the large oak tree (inside the fence) was located. He suggested adding a continuing condition which states that no further work can be done beyond the limit of the fence. He asked the Commission to close the hearing as they did not want to come back.

Jane disagreed, stating that the Commission does have jurisdiction over this project, adding that she had collected biological evidence to certify the pool during her previous site visit in spring, 2011, as described in her Manager's Report. Val asked her to show, through the JanCo case, etc. (i.e. read information contained in her Manager's Report) that the Commission does have jurisdiction in the Commission's opinion. Jane read the following excerpts of her Manager's Report aloud:

- "Performance standards are written for pools occurring in Land Subject to Flooding (310 CMR 10.57). However, vernal pools occurring in any jurisdictional wetland can be protected by applying the standards at 10.57. This was adjudicated in 1997 in JanCo v. Foxboro (Docket 97-069, DEP #157-241).
- The preamble to the 1987 regulations state that with adequate information presented during a public hearing, such as photographs of evidence that would suffice for certification, commissions may protect uncertified vernal pools as though they had been certified - the presumption of non-existence has been overcome.
- Under their jurisdictional authority [310 CMR 10.53(1)], Conservation Commissions can protect a vernal pool as if certified."

Val wanted the record to reflect both opinions; that the Commission believed that the area was jurisdictional and the Applicant's representative believed that it was not jurisdictional.

Val also wanted the location of the swale to be added to the plan. Mr. Buckley stated that the swale would be on the "vernal pool side of the fence" and sketched it onto the plan, indicating that the swale would be between the hay bale line and the fence, approximately 38 feet from the wetland. He indicated that they will initially stabilize the 4:1 slope, but then all activity would remain inside of the fence line.

The Commission noted their concern that the newly opened canopy would invite invasive plant species, stating that the area should be stabilized as soon as possible with native species. Atty. Watsky indicated that the Commission could condition the removal of invasives such as briars and poison ivy. Judi clarified that poison ivy was not an invasive plant, adding that she would prefer the

Applicant to come back for any future work (i.e. invasive species management). She also stated that she would prefer that he used only native seed mixes to stabilize the slope.

Bob then summarized:

1. A revised plan will be submitted, after the close of the hearing, but prior to the issuance of the Order of Conditions, showing:
 - a. the location of the gentle swale at the bottom of the slope to capture runoff, and
 - b. the location of the large oak tree, which will remain.
2. The applicant is not to exceed the limit of the fence line as shown on the plan, and
3. The slope outside of the fence shall initially be stabilized with a native seed mix.

Motion was made by Allan Curtis to close the hearing for 15 Kendall Drive, File F2012-1, seconded by Doug Davis. **Vote: 7:0:0**

General Discussions

Article 9 - Bob reported on the status of Article 9, which was approved at the 12/5/11 Special Town Meeting. He explained that Town Council had not been asked to review Article 9 before it was submitted to the State House, since Kevin Paicos had said that it was not necessary. Town Council is reviewing it now; after it has been reviewed, it will go back to the State House. Val wanted to find out the timeframe for Town Counsel's review, to ensure that the Commission had enough time if it needed to be amended and then go back to Town Meeting for another vote.

Conservation Rental Houses - Bob indicated that he will be meeting with the Southeastern Regional Vocational Technical High School instructors regarding the renovations at 87 North Street. He will also attend the Capital Planning Committee meeting to request funds for that renovation.

Val and Judi are researching the Commission's properties regarding options, risk, gain and how to fund repairs and restoration work. Val would like a copy of the Atty. General's letter regarding the rental requirement, which Kevin Paicos had mentioned, adding that the Commission needs to know what the regulations and the Procurement Laws require. Judi indicated that the Fairbanks property is in need of a septic system; high groundwater could be an issue. The Board of Health could provide an estimate for the cost of a new system.

Jane informed the Commission that (1) letters had been mailed to the two tenants regarding their probable rent increases and (2) Lee Ann had contacted realtors about marketing the two properties. Bob said he would be available to visit the properties with realtors. Lead paint may be an issue.

Bob stated that Jack Authelet of the Historical Society is interested in antique items at 87 North Street. He will be meeting Bob at the house on Saturday; Bob will let him have anything he wants.

Regulations - The Commission formed a sub-committee to work on Regulations for the Bylaw.

Vernal Pool Certification - Jane asked the Commission whether they wanted her to certify the vernal pools off Cocasset Street, saying that she had collected biological evidence to certify the site's pools, when she performed her site visit, with the applicant's permission. The Commission recommended that if the biological evidence has been collected, she should submit her findings for certification.

January 23, 2012 Minutes

Motion was made by Eric Nelson to accept the January 23, 2012 meeting minutes as distributed; seconded by Judi Johnson. **Vote: 7-0-0.**

Vernal Pool at 15 Kendall Drive

Jane reminded the Commission that if biological evidence that a wetland functions as a vernal pool is presented during a hearing, the presumption that ILSF does not function as wildlife habitat (per WPA performance standards) has been overcome. The Commission has the discretionary authority to protect the vernal pool as though certified, based on evidence presented during the hearing.

New Filings Distributed to Commissioners

- Request for Determination – 8 Independence Drive

Meeting Adjourned

Motion was made by Valerie Marshall to adjourn; seconded by Allan Curtis. **Vote: 7-0-0**

The meeting adjourned at 8:43 p.m.

Respectfully submitted,

Eric Nelson, Clerk

Draft minutes submitted by Lee Ann Tavares: 3/29/12

Reviewed by Jane Sears Pierce: 4/4/12

Approved by Commission: 5/21/12

Documents, Not Referenced Above, Reviewed During Meeting

Attached Documents:

1. Agenda, March 5, 2012
2. Meeting Sign In Sheet

Location of Other Documents:

3. Manager's Report, filed in Manager's Report binder in Conservation Commission's office.
4. Referenced project documents: please see Conservation Commission's project file